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# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

S/049/0052

0004

December 15, 2009

CERTIFIED RETURN RECEIPT  
7005 2570 0000 4801 5266

Wayne Nielson  
Nielson Construction  
PO Box 620  
Huntington, Utah 84528

Subject: Proposed Assessment for State Cessation Order No. CO-2009-17-04, Nielson Construction, Nielson Limestone Mine, S/049/0052, Utah County, Utah

**Response Due By: 30 Days of Receipt**

Dear Mr. Nielson:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division Inspector, Lynn Kunzler, on September 17, 2009. Rule R647-7-103 et. seq. has been utilized to determine the proposed penalty of \$308.00. The enclosed worksheet outlines how the civil penalty was assessed.

By these rules, any written information, which was submitted, by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of this penalty.

Under R647-7-106, there are two informal appeal options available to you. You may appeal the 'Fact of the Violation', the proposed civil penalty, or both. If you wish to informally appeal you should file a written request for an Informal Conference within thirty 30 days of receipt of this letter.

The informal conference will be conducted by a Division-appointed Conference Officer. The informal conference for the fact of the violation is distinct from the informal assessment conference regarding the proposed penalty.



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If you wish to review both the fact of the violation and proposed penalty assessment, you should file a written request for an Assessment Conference within thirty - (30) days of receipt of this letter. If you are also requesting both a review of the fact of violation, and the proposed penalty, the assessment conference will be scheduled immediately following the review of the fact of the violation.

**If a timely request for review is not made, the fact of the violation will stand, the proposed penalty will become final, and will be due and payable within thirty - (30) days of the date of this proposed assessment (by January 19, 2010).** Please remit payment to the Division, mail c/o Vicki Bailey.

Sincerely,



Tom Munson  
Assessment Officer

TM:vs

Enclosure: Proposed assessment worksheet

cc: Vicki Bailey, Accounting  
Vickie Southwick, Exec. Sec.

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**WORKSHEET FOR ASSESSMENT OF PENALTIES**  
**DIVISION OF OIL, GAS & MINING**  
**Minerals Regulatory Program**

COMPANY / MINE Nielson Construction /Nielson Limestone Mine PERMIT S/049/0052

CO # MC-2009-17-4

ASSESSMENT DATE December 14, 2009

ASSESSMENT OFFICER Tom Munson

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall three (3) years of today=s date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>None</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

**TOTAL HISTORY POINTS 0**

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector=s and operator=s statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event  
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

**PROVIDE AN EXPLANATION OF POINTS:**

*\*\*\*according to the inspector, operations had expanded beyond the 5- acre limit for a small mining operation. Therefore the event is considered to have occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 7

**PROVIDE AN EXPLANATION OF POINTS:**

*\*\*\*Approximately 2.5 acres outside the permit area has been impacted by the operation, mostly for stockpiling mined and crushed materials. There were no impacts outside this area. Points were therefore assigned at the lower 1/4 of the range.*

B. ~~ADMINISTRATIVE VIOLATIONS~~ (Max 25pts)

1. ~~Is this a POTENTIAL or ACTUAL hindrance to enforcement?~~

~~RANGE 0-25~~

~~Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.~~

~~ASSIGN HINDRANCE POINTS~~

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

TOTAL SERIOUSNESS POINTS (A or B) 27

III. **DEGREE OF FAULT** (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligent

ASSIGN NEGLIGENCE POINTS 7

**PROVIDE AN EXPLANATION OF POINTS:**

*\*\*\*A prudent operator should have been aware that all areas disturbed by mining, including work areas, pads, and stockpiles are part of the permitted area. Since this is the first permit this operator has had, points were assigned at the midpoint of the negligence range.*

IV. **GOOD FAITH** (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- ~~A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?~~  
~~IF SO EASY ABATEMENT~~

~~Easy Abatement Situation~~

- ~~X Immediate Compliance 11 to 20\*~~  
~~(Immediately following the issuance of the NOV)~~  
~~X Rapid Compliance 1 to 10~~  
~~(Permittee used diligence to abate the violation)~~  
~~X Normal Compliance 0~~  
~~(Operator complied within the abatement period required)~~  
~~(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)~~

~~\*Assign in upper or lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.~~

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- |   |   |             |
|---|---|-------------|
| X | Rapid Compliance  | -11 to -20* |
|   | (Permittee used diligence to abate the violation)   |             |
| X | Normal Compliance   | -1 to -10*  |
|   | (Operator complied within the abatement period required)  |             |
| X | Extended Compliance   | 0           |
|   | (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete) |             |
|   | (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)   |             |

EASY OR DIFFICULT ABATEMENT? Difficult abatement – plans were required.

ASSIGN GOOD FAITH POINTS 20

**PROVIDE AN EXPLANATION OF POINTS:**

*\*\*\*Operator used a great degree of diligence in abating this violation. Within a couple days of receiving the violation, the operator was in contact with the Division to arrange for the increase in surety, which was provided by October 15, 2009. The operator hired a consulting group to prepare the required plans and was in regular contact with the Division regarding the status of the work. Plans were submitted prior to the abatement deadline. 20 good-faith points are therefore awarded.*

**V. ASSESSMENT SUMMARY (R647-7-103.3)**

NOTICE OF VIOLATION # MC-2009-17-04

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>27</u>
III.	TOTAL NEGLIGENCE POINTS	<u>7</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-20</u>
	TOTAL ASSESSED POINTS	<u>14</u>

**TOTAL ASSESSED FINE                    \$ 308.00**